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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,238	12/29/2006	Arthur Zwingenberger	70566-0021US	5112
22902 7590 03/12/2009 CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005				
EXAMINER				
MCADAMS, BRAD				
ART UNIT		PAPER NUMBER		
2456				
MAIL DATE		DELIVERY MODE		
03/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/576,238

**Applicant(s)**

ZWINGENBERGER ET AL.

**Examiner**

ROBERT B. MCADAMS

**Art Unit**

2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 11/25/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office Action is in response to the amendment filed on December 24, 2008.
2. Claims 1-11 and 16 have been cancelled. Claims 12-15 and 17-20 are pending.

### *Response to Arguments*

3. Applicant's arguments with respect to Claims 12-15 and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 12-15, 17 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Veitch* (PCT Pub No. WO01/94016) in view of *Hickle* (U.S. PGPub No. 2002/0188259 A1).

As to **Claims 12 and 17**, *Veitch* discloses an RFID tag configured to receive, record, store and make available for subsequent electronic transmission information relating to an instrument to be sterilized (**Sample containers 310 have an RFID tag**

**which receive, record, store and make available information relating to the sample. Paragraph bridging Page 12 and 13).**

However, *Veitch* does not expressly disclose a seal configured to fit between a tray and a lid of said container wherein said tag is in said seal.

*Hickle*, in the same field of endeavor, discloses a seal configured to fit between a tray and a lid of said container wherein said tag is in said seal (**Figure 4; Paragraph 0047**).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to have combined the sterilization container as taught by *Veitch* with the RFID being imbedded in the seal between the lid and container body as taught by *Hickle*. The motivation would have been to be able to count the amount of uses from the seal being broken.

As to **Claim 13**, *Veitch-Hickle* further discloses wherein said information comprises the serial number of said container (**Page 11, Lines 11-14**).

As to **Claim 14**, *Veitch-Hickle* further discloses a tag in combination with said container for a plurality of said **instruments (RFID tag 420 is attached to sample container 410 holding samples in each container. Page 13, Lines 15-19).**

As to **Claim 15**, *Veitch-Hickle* further discloses a tray (**10, Figure 1b**) for receiving said plurality of instruments to be sterilized, a lid (**15, Figure 1b**) for covering

said tray and forming an enclosure, and a seal between said tray and lid for sealing said enclosure and having at least a portion of said tag embedded therein (**Hickle; 44, Figure 4; Paragraph 0047**).

As to **Claim 19**, *Veitch-Hickle* further discloses a tag in combination with an Autoclave for sensing and indicating a sterilization process to which an instrument has been subjected comprising: a power supply, a switch for determining when a predetermined temperature and/or pressure condition has been reached and for activating said power supply in response thereto, a sensor for detecting sterilization temperature and/or pressure conditions at a contact point, and a central processing unit for processing the information from the sensors and writing said information to said RFID tag for subsequent retrieval (**Page 4, Lines 21-30**).

6. **Claims 18 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Veitch* (PCT Pub No. WO01/94016) in view of *Hickle* (U.S. PGPub No. 2002/0188259 A1) and in further view of *Teller* (U.S. Patent No. 6,454,162 B1).

As to **Claim 18**, *Veitch-Hickle* disclose the tag as substantially discussed in Claim 12.

However, *Veitch-Hickle* do not expressly disclose wherein the tag accumulates the number of sterilization procedures.

*Teller*, in the same field of endeavor, teaches wherein said tag is capable of accumulating the number of sterilizing procedures in which said seal has been used **(Column 2, Lines 51-65 and paragraph bridging Columns 2 and 3)**.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to embed the tag in the seal, as taught by *Veitch-Hickle*, to accumulate the number of procedures performed as taught by *Teller*. The motivation would have been to assure proper procedure.

As to **Claim 20**, *Veitch* discloses a method of sealing a sterilizing cassette and for monitoring the contents of the cassette comprising the steps of:

providing a sterilizing cassette having a tray portion and a lid portion, said cassette being configured to receive a seal between said tray portion and said lid portion, placing a seal in said cassette between said tray portion and said lid portion **(Figure 1b)**,

However, *Veitch* does not expressly disclose wherein said seal includes an RFID tag capable of recording the content of said cassette and the number of cycles to which the cassette has be subjected.

*Hickle*, in the same field of endeavor, discloses a seal configured to fit between a tray and a lid of said container wherein said tag is in said seal **(Figure 4; Paragraph 0047)**.

*Teller*, in the same field of endeavor, discloses wherein said tag is capable of accumulating the number of cycles and contents in which the cassette has been used **(Column 2, Lines 51-65 and paragraph bridging Columns 2 and 3).**

At the time of invention, it would have been obvious to a person of ordinary skill in the art to embed the tag in the seal, as taught by *Veitch-Hickle*, to accumulate the number of cycles performed as taught by *Teller*. The motivation would have been to assure proper procedure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT B. MCADAMS whose telephone number is (571)270-3309. The examiner can normally be reached on Monday-Thursday 6:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. B. M./  
Examiner, Art Unit 2456

/Ashok B. Patel/  
Primary Examiner, Art Unit 2456